

Appl. No.: 10/629,887  
Amdt. dated 12/14/2005  
Reply to Office action of September 14, 2005

### REMARKS/ARGUMENTS

The applicant requests reconsideration of the present application in view of the above changes to the claims and the following remarks, which are responsive to the Office Action mailed September 14, 2005.

#### **I. Status of Claims**

In the Office Action, Claims 1-45 were noted as pending in the application, with Claims 8, 9, 23 and 24 noted as withdrawn from consideration. As a result of this response, Claims 1-24, 27-33 and 35-45 remain pending. Dependent Claims 25, 26 and 34 have been canceled, and independent Claim 17 and dependent Claims 27-32 and 35 have been amended in order to further clarify the claimed invention. As independent Claim 17 has been amended to include the recitations of dependent Claim 34, and since Claims 27-32 and 35 have only been amended to update their dependencies, the amendments do not raise new issues and, therefore, should be substantively considered at this juncture.

#### **II. Election/Restrictions**

As a result of prior restriction and election requirements, Claims 8, 9, 23 and 24 have been withdrawn from consideration. Independent Claims 1 and 17 remain generic, however, such that upon the allowance of independent Claims 1 and 17, dependent Claims 8, 9, 23 and 24 should be rejoined and similarly allowed.

#### **III. Claim Rejections**

##### **a. 35 U.S.C. §102(e) Rejection**

The Official Action rejected Claims 1, 4-7, 17, 20-22, 25-28, 30-32, 36 and 44 under 35 U.S.C. §102(e) as anticipated by Culbert (U.S. Patent No. 6,377,648) (hereinafter "*Culbert*"). (Office Action, pg. 3, para. 2). As indicated above, of these, Claims 25 and 26 have been canceled such that the rejection of these claims is moot. For at least the reasons set forth below, Applicant respectfully submits that the remaining Claims 1, 4-7, 17, 20-22, 27, 28, 30-32, 36 and

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44 are not anticipated by *Culbert* and, therefore, respectfully requests that the rejection of these claims be withdrawn.

In particular, reference is made to Independent Claim 1, which is reproduced below for the Examiner's convenience.

1. A device comprising:  
a housing; and  
a lower plurality of blades cooperating to define an exit aperture from said housing, said lower plurality of blades carried within said housing in a movable manner with respect to one another so as to enable the size of said exit aperture to be varied for singulating articles falling through said exit aperture.

Applicant respectfully asserts that *Culbert* does not teach or suggest a "lower plurality of blades carried within said housing in a movable manner with respect to one another so as to enable the size of said exit aperture to be varied." (Applicant's Claim 1).

*Culbert* discloses a pill counting machine having three pill rotors "capable of rotating at predetermined synchronized speeds in order to sort the pills into pill bottles." (*Culbert*, Col. 1, lns. 62-64).

According to *Culbert*,

During operation, the pill is placed in the pill receiving portion 22 of the funnel 20 (along with other pills). As the pill reaches the opening 26 of the neck portion 24, the pill will either (1) fall into a hole 36 of the first rotor 30 positioned directly underneath or (2) contact a top interhole surface 38 of the first rotor 30, thereby remaining in the neck portion 24 of the funnel 20 until a hole 36 is positioned directly underneath as the first rotor 30 continues to rotate. When the pill falls into the hole 36, the top surface 42 of the second rotor 40 prevents the pill from falling further. As the first rotor 30 continues to spin, the pill is carried in the hole 36 of the first rotor 30 until the hole is aligned with the single orifice 46 of the second rotor 40. At that point, the pill falls from the hole 36 of the first rotor 30 into the single orifice 46 of the second rotor. At the same instance, the top interopening surface 52 of the third rotor surface 58 is directly below the single orifice 46 of the second rotor 40. As the third rotor 50 continues to rotate, the single orifice 46 of the second rotor 40 is vertically aligned with a chamber 56 opening in the third rotor 50, permitting the pill to fall through the opening into a chamber 56 of the third rotor 50. The pills may then be removed using the trap door 55.

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(*Id.* at Col. 4, ln. 63 – Col. 5 ln. 18, *emphasis added*).

While the Applicant does not agree with the position taken by the Official Action that the three pill rotors 30, 40 and 50 of *Culbert* are equivalent to the lower plurality of blades of the claimed invention, assuming this to be the case, the “exit aperture” would necessarily be the chamber 56 opening in the third rotor 50 since this is the opening into which the pill is finally received and from which the pill ultimately exits the pill counting machine upon opening of the trap door 55 (*See Culbert*, Col. 5, lns. 13-18). Nothing in *Culbert* suggests that the size of this chamber is anything other than fixed. Further, *Culbert* does not teach or suggest the three pill rotors being movable in a manner that would enable the size of the chamber in the third rotor to be varied.

Alternatively, it may be contended that the combination of the openings in the three rotors make up the exit aperture. As noted above, Applicant submits that this contention is improper, as the pill is retained in and eventually exits from the chamber in the third rotor alone, regardless of the path through the openings in the other rotors that the pill has taken. In fact, the first and second rotors may have rotated out of alignment with the chamber in the third rotor such that the openings in the respective rotors are not aligned at the time that the trap door is opened and the pill is removed from the chamber in the third rotor, such that the combination of the openings in the three rotors could not logically be considered the exit aperture, i.e., the aperture from which the pill exits. However, even assuming this contention to be the case (which Applicant expressly does not), *Culbert* does not teach or suggest the three pill rotors being movable in a manner that would enable the size of that combination of openings to be varied as recited by independent Claim 1.

As described by *Culbert*, the pill falls from the funnel through the chamber 56 when the hole 36 of the first rotor 30 “is aligned with the single orifice 46 of the second rotor 40” and then when the “single orifice 46 of the second rotor 40 is vertically aligned with a chamber 56 opening.” The size of the “exit aperture” would, therefore, be the size of the smallest of the three openings – 36, 46 and 56 – when they are “aligned.” In particular, as described by *Culbert*, as the rotors rotate and the pill falls from one to the other, the hole in the top rotor is always, at some point, aligned with the hole/chamber of the bottom rotor. The size of the opening is,

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therefore, always going to ultimately be the size of the smallest of those holes. *Culbert* does not teach or suggest the pill rotors being movable in a manner with respect to each other that would enable the size of the smallest of the three openings to be varied and, instead, the size of the smallest opening is fixed and remains constant.

Based on the foregoing, Applicant respectfully asserts that Independent Claim 1 is not anticipated by *Culbert* and, therefore, requests that the rejection of Claim 1 under §102(e) be withdrawn.

Claims 4-7 depend from independent Claim 1 and include all of the recitations of that claim plus additional recitations that further distinguish the art applied in the rejection. Thus, for at least the reasons set forth above with respect to independent Claim 1, it is submitted that dependent Claims 4-7 are further not anticipated by *Culbert*. Applicant respectfully requests, therefore, that the rejection of dependent Claims 4-7 under 35 U.S.C. §102(e) similarly be withdrawn.

Reference is now made to Independent Claim 17, which is reproduced below, as amended, for the Examiner's convenience:

17. A singulating device, comprising:  
a housing having an entry aperture and an exit aperture;  
a metering device carried by said housing and controlling said entry aperture, said metering device comprising an upper plurality of blades; and  
a lower plurality of blades ~~blade~~ carried within said housing and set off from said ~~upper~~ metering device to define a chamber there between, said lower plurality of blades ~~blade~~ controlling said exit aperture.

As shown, independent Claim 17 has been amended to incorporate the recitations of dependent Claim 34, which depends directly from independent Claim 17, and which the Examiner has indicated would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. (Office Action, pg. 6, para. 6).

In response, therefore, Applicant respectfully asserts that independent Claim 17, as amended, is allowable and requests that the rejection of independent Claim 17 under 35 U.S.C. §102(e) be withdrawn.

Claims 20-22, 27, 28, 30-32, 36 and 44 depend from independent Claim 17 and include all of the recitations of that claim. Because independent Claim 17, as amended, is now

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allowable, based on the Examiner's indication of allowable subject matter on page six, paragraph six of the Office Action, the rejection of these dependent claims is now moot. Applicant respectfully requests, therefore, that the rejection of dependent Claims 20-22, 27, 28, 30-32, 36 and 44 be withdrawn.

**b. 35 U.S.C. §102(b)**

The Examiner rejected Claims 17, 20-22 and 44 under 35 U.S.C. §102(b) as anticipated by Benarrouch (U.S. Patent No. 5,549,217). (Office Action, pg. 4, para. 3). As stated above, independent Claim 17 has been amended to incorporate the recitations of dependent Claim 34, which the Examiner has indicated would be allowable if rewritten in independent form including all of the recitations of the base claim and any intervening claims. Applicant, therefore, respectfully asserts that independent Claim 17, as amended, is allowable and requests that the rejection of independent Claim 17, and claims 20-22 and 44 depending therefrom, under 35 U.S.C. §102(b) be withdrawn.

**c. 35 U.S.C. §103(a)**

Finally, the Examiner rejected dependent Claims 2, 3, 18, 19 and 38-42 under 35 U.S.C. §103(a) as unpatentable over *Culbert* in view of *Bartur* (U.S. Patent No. 6,263,259) (hereinafter "*Bartur*"). (Office Action, pg. 5, para. 5).

With respect to Claims 2 and 3, which depend from independent Claim 1, as discussed above, *Culbert* fails to teach or suggest a "lower plurality of blades carried within said housing in a movable manner with respect to one another so as to enable the size of said exit aperture to be varied." *Bartur* likewise fails to teach this element of independent Claim 1. In fact, the Office Action cites *Bartur* for a different purpose. In particular, the Examiner cites *Bartur* for the teaching of a device comprising a unique RFID tag and a memory device for storing information. (*Id.*). The cited references, therefore, even if combined, do not teach or suggest all of the recitations of independent Claim 1. Because dependent Claims 2 and 3 include all of the recitations of Claim 1 plus additional recitations, the references further do not teach or suggest dependent Claims 2 and 3 for at least the same reasons.

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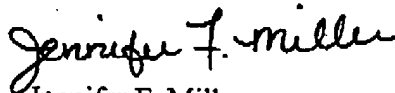
As to the rejection of Claims 18, 19 and 38-42, which depend from independent Claim 17 and include all of the recitations of that claim, as indicated above, Claim 17 has been amended to include recitations of dependent Claim 34, which the Examiner has indicated would be allowable if rewritten in independent form. Independent Claim 17, as amended, is, therefore, allowable, and the rejection of these dependent Claims 18, 19 and 38-42 is moot.

For at least these reasons, applicant respectfully requests that the rejection of Claims 2, 3, 18, 19 and 38-42 under 35 U.S.C. §103(a) be withdrawn.

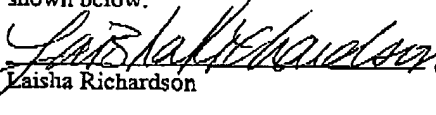
#### IV. Conclusion

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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